

BEFORE THE
UTAH AIR QUALITY BOARD

In the Matter of:

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Sevier Power Company Power Plant
Sevier County, Utah
DAQE-AN2529001-04

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Findings of Fact, Conclusions of Law,
and Final Order

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The Utah Chapter of the Sierra Club (referred to herein as “Sierra Club”) filed a Request for Agency Action dated November 12, 2004 and petition to intervene seeking review of the October 12, 2004 decision by the Executive Secretary of the Utah Air Quality Board to issue an Approval Order granting a permit to Sevier Power Company (“SPC”) to construct and operate a coal-fired power plant in Sevier County, Utah. The Sierra Club presented nine issues for consideration of the Board. The Utah Air Quality Board denied Sierra Club’s petition to intervene, which was appealed. The Utah Supreme Court, on November 21, 2006, determined Sierra Club had made a sufficient demonstration to support intervention and remanded the matter to the Board for hearing. PacifiCorp had also filed a petition to intervene, which was initially denied, but as a result of the Utah Supreme Court decision, PacifiCorp renewed its petition to intervene. The Board granted PacifiCorp intervention on Issue 2 of the Sierra Club’s Request for Agency Action. Sierra Club filed a Motion for Leave to Amend its Request for Agency Action that was granted by the Board, which added an Issue 10.

On April 4, 2007, the Utah Air Quality Board heard dispositive motions from all parties on Sierra Club’s Requests for Agency Action. Joro Walker and David Becker appeared for the Sierra Club; Brian W. Burnett and Fred W. Finlinson appeared for SPC; Martin K. Banks

appeared for PacifiCorp; and Paul M. McConkie and Christian C. Stephens appeared for the Executive Secretary. Utah Air Quality Board members present were Dianne R. Nielson, Wayne M. Samuelson, H. Craig Petersen, James R. Horrocks, Nan Bunker, Stead Burwell, Stephen C. Sands, Don J. Sorensen, Kathy Van Dame, and Darrell Smith. Mr. Sands and Ms. Van Dame recused themselves. Mr. Ernest E. Wessman had earlier recused himself and left the proceedings. The Board denied all motions with the exception of the Motions for Judgment on the Pleadings by SPC, PacifiCorp, and the Executive Secretary on Issue 1, which was granted.

Sierra Club subsequently withdrew issues 5 and 6, leaving issues 2, 3, 4, 7, 8, 9, and 10 to be heard by the Board at hearings on October 1, 2007, October 3, 2007, November 7, 2007, and November 12, 2007. The Board heard this matter pursuant to its authority as set forth in Chapter 2 of Title 19 of the Utah Code and conducted the proceeding pursuant to the provisions of Utah Administrative Code (“UAC”) R307-103 et seq. as a formal adjudicative proceeding under the provisions of the Administrative Procedures Act as set forth in Utah Code Ann. § 63-46b-8. Joro Walker and David Becker appeared for the Sierra Club, Brian W. Burnett and Fred W. Finlinson appeared for SPC, and Paul M. McConkie and Christian C. Stephens appeared for the Executive Secretary. Issue 2 was heard on November 12, 2007, and in addition to the counsel listed above, Martin K. Banks and Michael Jenkins appeared for PacifiCorp. At those hearings, Utah Air Quality Board members present were Wayne M. Samuelson, H. Craig Petersen, James R. Horrocks, Nan Bunker, Kathy Van Dame (who recused herself), Joel E. Epstein, Richard W. Sprott (who recused himself) and Darrell Smith. Board member Stead Burwell was also in attendance for all but the October 1, 2007, hearing. He reviewed the transcript and evidence from that hearing date. Mr. Ernest Wessman and Mr. Stephen C. Sands had previously recused

themselves and were not present.

In all the proceedings and hearings, Fred Nelson acted as counsel for the Board.

The underlying issue before the Board is whether the Executive Secretary complied with State statutes and the Utah Air Quality Board rules in issuing the October 14, 2004, Approval Order to Sevier Power Company. To prevail, petitioners have the burden of proving that the Executive Secretary failed to comply with State air quality requirements. “[T]he proper standard of proof in the administrative context is generally the ‘preponderance of the evidence’ standard.” *Harken SW. Corp. v. Bd. of Oil, Gas & Mining*, 920 P.2d 1176, 1182 (Utah 1996).

The Board makes the following findings, conclusions, and final order with respect to each of the issues presented by Sierra Club:

Issue 1

Issue 1 is whether the Executive Secretary failed to address carbon dioxide and other greenhouse gases relating to the SPC Plant. The Board granted the Motions for Judgment on the Pleadings by SPC, PacifiCorp, and the Executive Secretary on this Issue 1 by a vote of seven in favor (Nielsen, Peterson, Burwell, Samuelson, Smith, Bunker, and Sorenson) and none opposed based on the following findings and conclusions that are restated as part of this final order.

While the United States Supreme Court has recently determined that carbon dioxide and other greenhouse gases come within the definition of “air pollutant” subject to regulation under the federal Clean Air Act (Massachusetts v EPA, 127 S.Ct. 1438 (April 2, 2007)), neither the EPA (as recognized in the U.S. Supreme Court opinion) nor the Utah Air Quality Board have, to date, adopted rules requiring limitations or consideration of carbon dioxide or other greenhouse gases as part of a new source review or a BACT determination. The definition of “air pollution”

as defined in U.C.A. § 19-2-102(3) over which the Board has authority to control and regulate (U.C.A. § 19-2-104) is “the presence in the ambient air of one or more air contaminants in the quantities and duration and under conditions and circumstances as is or tends to be injurious to human health or welfare . . . as determined by the rules adopted by the board.” Inasmuch as the Board has never adopted rules governing carbon dioxide or other greenhouse gases, it has not, as a matter of law, required limitations or consideration of carbon dioxide or other greenhouse gases as part of the approval order or permit process.

The Board rejected Sierra Club’s argument that the definition of BACT requires consideration of all pollutants that could be regulated, to include carbon dioxide, and other greenhouse gases. The Board interprets the language of its rule to mean that the phrase “pollutant subject to regulation under the Clean Air Act and/or the Utah Air Conservation Act” in the definition of BACT (UAC R307-101-2) references pollutants for which the Board has established rules, not pollutants that could potentially be subject to rules. Since the Board has not promulgated rules governing carbon dioxide or other greenhouse gases, the Executive Secretary had no rules to enforce, and, with respect to the issue of not requiring limitations and consideration of carbon dioxide and other greenhouse gases, the Executive Secretary correctly, as a matter of law, issued an approval order to SPC without addressing carbon dioxide and other greenhouse gas emissions.

Issue 2

Issue 2 is whether the Executive Secretary failed to consider adequately Integrated Gasification Combined Cycle (“IGCC”) in its Best Available Control Technology (“BACT”) determination for the SPC facility.

On November 12, 2007, the Board upheld the actions of the Executive Secretary on Issue 2 by a vote of six in favor (Horrocks, Peterson, Samuelson, Smith, Bunker, and Epstein) and one opposed (Burwell) based on the following findings and conclusions.

Findings of Fact

1. A party intending to construct a “major” new source in a NAAQS attainment area must first obtain an approval order. UAC R307-401-1 (references to the Board’s rules in the findings and conclusions of this order are the rules in effect at the time of the issuance of the approval order to SPC).

2. The applicant for an approval order must demonstrate that the new source will employ BACT for each criteria pollutant emitted. UAC R307-401-6.

3. UAC R307-101-2(4) defines BACT as follows:

[A]n emission limitation and/or other controls to include design, equipment, work practice, operation standard or combination thereof, based on the maximum degree or reduction of each pollutant subject to regulation under the Clean Air Act and/or the Utah Air Conservation Act emitted from or which results from any emitting installation, which the Air Quality Board, on a case-by-case basis taking into account energy, environmental, and economic impacts and other costs, determines is achievable for such installation through application of production processes and available methods, systems, and techniques, including fuel cleaning or treatment or innovative fuel combustion techniques for control of each such pollutant

4. SPC filed an application, a Notice of Intent (“NOI”), asking the Executive Secretary for an approval order to allow SPC to build a power plant utilizing a Circulating Fluidized Bed (“CFB”) boiler in conjunction with a limestone injection and a dry lime scrubber for sulfur dioxide control, along with selective non-catalytic reduction (“SNCR”) with ammonia injection as a post-combustion control device for NOx control. SPC 0052-0738.

5. After an applicant has proposed the type of installation or power generation

technology, then through the BACT analysis the applicant must identify available emission control technology options for the particular proposed installation proposed. Campbell Pre-Filed Testimony (August 31, 2007) at 5. Campbell Hearing Testimony, November 12, 2007 at 265-273, 290.

6. In doing a BACT review, a “top-down” method, though not required, may be used for determining BACT as follows: (1) identify control technology options (“Step 1”), (2) eliminate technically infeasible control technologies, (3) rank remaining technologies, (4) evaluate the most effective controls, and (5) select the most effective remaining option. EPA’s New Source Review Workshop Manual (“NSR Manual”), at B.5.

7. In review of the SPC application for an approval order, the Executive Secretary determined that IGCC had not been proposed by SPC and that IGCC was a different power generation technology and not a “control technology” to be considered under Step 1, and therefore, did not include IGCC in assessing what was BACT for the proposed facility. September 27, 2004 Memorandum to Sevier Power Plant File, at 30, SPC 2523. Jenks Pre-Filed Testimony (October 22, 2007), at-10. Jenks Hearing Testimony, November 12, 2007, at 37.

8. Sierra Club argued that IGCC is a production process and existing available technology that should have been considered in any BACT determination for the SPC plant, and presented information on plants in the United States and Europe. Thompson Pre-Filed

Testimony, August 31, 2007, at 5-41. Thompson Pre-Filed Testimony, November 6, 2007, at 2-

9. Thompson Hearing Testimony, November 12, 2007, at 99-142.

9. In a CFB plant, coal is a fuel, whereas in an IGCC plant the coal is a feedstock for a chemical process, where it is thermally converted into a gas. For an IGCC facility, this syngas

which is the fuel is then combusted in a separate gas turbine power plant, not a boiler. Jenkins Pre-Filed Testimony, August 31, 2007 at 3-5, 7, 9-10. Jenkins Hearing Testimony, November 12, 2007 at 182-184, 208-209.

10. IGCC is a power generation technology, not an emission control technology. Jenkins Pre-Filed Testimony, August 31, 2007 at 4, 7, 8, 42. Campbell Hearing Testimony, November 12, 2007. at 281, 288. Jenkins Hearing Testimony, November 12, 2007, at 187-190, 200, 208.

11. IGCC is not a technology that can be added onto or designed into the proposed CFB installation “for the control of . . . pollutant[s].” Jenkins Pre-Filed Testimony, August 31, 2007, at 7. Jenkins Hearing Testimony, November 12, 2007, at 188-190.

12. The BACT requirement is not to be used “as a means to redefine the design of the source when considering available emission control options.” NSR Manual at B.13. *In re Pennsauken County, New Jersey Resource Recovery Facility*, PSD Appeal No. 88-8, 1988 WL 249035 (EPA November 10, 1988). EPA’s 8/30/07 Response to Comment #2a, Deseret Power’s Permit No. PSD-OU-0002-04.00, attached to Jenks Pre-Filed Testimony, October 22, 2007.

13. Because of the fundamental differences between CFB and IGCC, requiring the inclusion of IGCC would effectively require SPC to redefine the design of its proposed CFB installation. Jenkins Pre-Filed Testimony, August 31, 2007, at 9-10, 42. Jenkins Hearing Testimony, November 12, 2007, at 189 –190. Campbell Pre-Filed Testimony, August 31, 2007, at 4, 8, 10-11.

14. Of the numerous states that have considered the issue of whether to include IGCC in a BACT analysis for a proposed CFB boiler, only three (Illinois, New Mexico, and Montana) did so, and Montana has since determined that IGCC not be included because it would redefine the

source. None of those states went on to conclude that IGCC was BACT. Campbell Pre-Filed Testimony, August 31, 2007, at 10-11. SPC's Summary of State Determinations re Inclusion of IGCC in BACT, attached to SPC's Pre-Hearing Brief.

15. Even if IGCC should be considered in a BACT analysis, only "available" control options are required to be included in Step 1. UAC R307-101-2(4); NSR Manual B.5, B.11.

16. With respect to the SPC installation, IGCC is not an "available" technology, but is still in the developmental stage. Jenkins Pre-Filed Testimony at 4, 16, 20-21, 24, 28, 30-31, 40-42. Jenkins Hearing Testimony, November 12, 2007, at 200-204, 209-210, 240-241, 307-308.

Conclusions of Law

1. Under the BACT definition in UAC R307-101-2(4), IGCC does not need to be included in BACT analysis, in that it is an installation that is a different power production technology and to do so would require redefining the source. Findings of Fact 9-13.

2. Because the law does not require the inclusion of IGCC in the BACT analysis, the Executive Secretary did not err by not requiring the inclusion of IGCC.

3. In exercising any discretion the Executive Secretary had to require or not require the inclusion of IGCC in Step 1 of the BACT analysis, the Executive Secretary's decision to not require the inclusion of IGCC was reasonable.

4. Even if the Executive Secretary was required to include IGCC in the BACT analysis, the Executive Secretary did not err by not requiring consideration of IGCC in the BACT analysis because only "available" control options are required to be included in Step 1, and, with respect to the SPC application, IGCC could not be considered an "available" technology. Findings of Fact 16.

Issue 3

Issue 3 is whether the Executive Secretary failed to provide adequate justification for not requiring Sevier Power Company to meet the most stringent oxides of nitrogen (“NO_x”) BACT limits proposed or required for other CFB Boilers.

On November 7, 2007, the Board upheld the actions of the Executive Secretary on Issue 3 by a vote of six in favor (Horrocks, Peterson, Samuelson, Smith, Bunker, and Epstein) and one opposed (Burwell) based on the following findings and conclusions.

Findings of Fact

1. SPC’s NOI to build a power plant utilized a CFB boiler with selective non-catalytic reduction (“SNCR”) with ammonia injection as a post-combustion control device for NO_x control. SPC 0054-0738.

2. SPC is required to employ the “best available control technology” (“BACT”) for NO_x. UAC R307-401-6(1).

3. SPC submitted a BACT analysis for NO_x with its NOI. SPC 0139-0145.

4. SPC’s BACT analysis concluded that the proposed emission limit for NO_x (0.10 lb/MMBtu based on a 24-hour basis) was equivalent to or lower than other facilities using CFB boilers with SNCR. SPC 0139-0145. Conger Pre-Filed Testimony, June 27, 2007, at 4-13. Conger Hearing Testimony, October 1, 2007, at 114-122.

5. The Executive Secretary conducted a BACT analysis and independently evaluated control technologies with potential application to SPC’s proposed CFB boiler. SPC 1031-1035. Jenks Pre-Filed Testimony, September 10, 2007, at 8-9. Jenks Testimony, October 1, 2007, at 161-180.

6. The Executive Secretary identified two technologies that were potentially applicable to the SPC project: SNCR which had been employed by SPC and Selective Catalytic Reduction (“SCR”). SPC 1031. Jenks Pre-Filed Testimony, September 10, 2007, at 8.

7. Sierra Club argued that SCR should have been more fully considered in the BACT determination for the SPC facility in that: SCR’s use had been demonstrated in CFB facilities overseas, SCR has better NOx control efficiencies, DAQ did not discuss SCR with vendors, and DAQ did not describe why SCR technology transfer to CFTs was infeasible. Sahu Pre-Filed Testimony, June 27, 2007, at 5-22. Sahu Hearing Testimony, October 3, 2007, at 621-655, 682-690.

8. The use of SCR on coal-fired atmospheric CFB boilers is not demonstrated as technically feasible because of issues involving the high particulate matter of the exhaust stream, the low exhaust gas temperature, as well as the chemical composition of the exhaust stream. SPC 1032. Jenks Pre-Filed Testimony, September 10, 2007, at 8-9. Jenks Hearing Testimony, October 1, 2007, at 161-180, 211. Campbell Pre-Filed Testimony, August 20, 2007, at 11-16. Campbell Hearing Testimony, October 3, 2007, at 667, 676-677. Conger Pre-Filed Testimony, June 27, 2007, at 11-13. Conger Hearing Testimony, at 120, Hennenfent Pre-Filed Testimony, June 27, 2007, at 4-7. Hennenfent Hearing Testimony, October 1, 2007, at 309-314.

9. The Executive Secretary “was unable to find a single instance of an atmospheric coal-fired atmospheric CFB boiler using SCR for control of NOx.” Jenks Pre-Filed Testimony, September 10, 2007, at 8. Campbell Pre-Filed Testimony, August 20, 2007, at 12-16.

10. The CFB boilers located overseas that use SCR are not comparable as argued by Sierra Club because they are small industrial boilers which do not burn coal. Jenks Hearing

Testimony, October 1, 2007, at 177-180; Hennenfent Hearing Testimony, October 1, 2007, at 312-314.

11. The Executive Secretary approved SPC's selection of SNCR as BACT for the SPC project because SNCR has been demonstrated to offer the maximum degree of reduction in reducing NOx emissions from CFB boilers. SPC 1032-1033.

12. SNCR technology has been demonstrated for use on atmospheric coal-fired CFB boilers and is BACT for the SPC project. SPC 0139-0145, 1031-1035. Jenks Pre-Filed Testimony, September 10, 2007, at 8-9. Jenks Hearing Testimony, October 1, 2007, at 161-180. Campbell Pre-Filed Testimony, August 20, 2007, at 17-20. Campbell Hearing Testimony, October 3, 2007, at 664-665, 692-693. Conger Pre-Filed Testimony, June 27, 2007, at 4-13. Conger Hearing Testimony, October 1, 2007, at 114-122, 149-150. Hennenfent Pre-Filed Testimony, June 27, 2007, at 4-7.

13. Sierra Club argued that even using SNCR, the Executive Secretary had not appropriately established NOx emission limitations for the SPC facility, more stringent numbers should have been applied based on actual emissions data from other facilities and alternative averaging periods. Sahu Pre-Filed Testimony, June 27, 2007. Sahu Hearing Testimony, October 3, 2007, at 621-655, 682-690.

14. The Executive Secretary reviewed EPA's BACT/RACT/LAER Clearinghouse, along with web searches and a review of other sources using CFB boilers with SNCR to approve the emission rate for NOx of 0.10 lb/MMBtu based on a 24-hour basis as BACT for SPC's project. SPC 1033-1035. Jenks Pre-Filed Testimony, September 10, 2007, at 8-9. Jenks Hearing Testimony, October 1, 2007, at 161-180, 218-220.

15. Permits with different time frames are statistically comparable to SPC's proposed emission limit of 0.10 lb/MMBtu on a 24-hour basis. Jenks Pre-Filed Testimony, September 10, 2007, at 8. Jenks Hearing Testimony, October 1, 2007, at 191-195. Campbell Hearing Testimony, October 3, 2007, at 655-658.

16. The Executive Secretary did not find "any atmospheric CFB boiler with a lower emission limit expressed with the same averaging period." Jenks Pre-Filed Testimony, September 10, 2007, at 9.

17. Other facilities, including those listed in the National Parks Service comments, are distinguished from the SPC emission limits based on the type of technology, fuel used, size of facility, different permit emission time periods and, actual emissions versus permit emission limits. Jenks Hearing Testimony, October 1, 2007, at 161-180. Campbell Hearing Testimony, October 3, 2007, at 655-675.

18. The emissions limit for NO_x for the SPC project, 0.10 lb/MMBtu based on a 24-hour basis, is the lowest permit limit for NO_x for an atmospheric CFB boiler using SNCR and is BACT for the SPC project. SPC 0139-0145, 1031-1035; Jenks Pre-Filed Testimony, September 10, 2007, at 8-9. Jenks Hearing Testimony, October 1, 2007, at 161-180. Campbell Pre-Filed Testimony, August 20, 2007, at 17-20. Campbell Hearing Testimony, October 3, 2007, at 660-666, 691-694. Conger Pre-Filed Testimony, June 27, 2007, at 4-13. Conger Hearing Testimony, October 1, 2007, at 114-122. Hennenfent Pre-Filed Testimony, June 27, 2007, at 4-7. Hennenfent Hearing Testimony, October 1, 2007, at 323.

Conclusions of Law

1. The Executive Secretary correctly determined that SNCR technology is BACT for the

SPC project. Findings of Fact 4-12.

2. The Executive Secretary did not err and complied with state rules in establishing the emission limit for NO_x (0.10 lb/MMBtu based on a 24-hour basis) as BACT in that it is equivalent to or lower than other facilities using CFB boilers with SNCR. Findings of Fact 14-18.

3. Sierra Club did not meet its burden of proving SCR was feasible and available to be considered as BACT nor that a more stringent emission limitation was BACT.

Issue 4

Issue 4 is whether the Executive Secretary failed to consider sufficiently activated carbon injection for control of mercury emissions from the SPC facility in its MACT determination.

On November 7, 2007, the Board upheld the actions of the Executive Secretary on Issue 4 by a vote of six in favor (Horrocks, Peterson, Samuelson, Smith, Bunker, and Epstein) and one opposed (Burwell) based on the following findings and conclusions:

Findings of Fact

1. The SPC facility will emit mercury, a Hazardous Air Pollutant (“HAP”), as defined by 112(b) of the Clean Air Act. UAC R307-101-2.

2. SPC was required to obtain an approved Maximum Achievable Control Technology (“MACT”) determination from the Executive Secretary regarding its mercury emissions pursuant to 40 C.F.R. § 63.43 which was incorporated into Utah’s regulations at UAC R307-214-2(2).

3. 40 C.F.R. § 63.43 (d) (1) and (2) state as follows:

The MACT emission limitation or MACT requirements recommended by the applicant and approved by the permitting authority shall not be less stringent than the emission control which is achieved in practice by the best controlled similar source, as determined by the permitting authority.

Based upon available information, as defined in this subpart, the MACT emission limitation and control technology (including any requirements under paragraph (d)(3) of this section) recommended by the applicant and approved by the permitting authority shall achieve the maximum degree of reduction in emissions of HAP which can be achieved by utilizing those control technologies that can be identified from the available information, taking into consideration the costs of achieving such emission reduction and any non-air quality health and environmental impacts and energy requirements associated with the emission reduction.

4. SPC conducted a case by case MACT determination which was submitted to the Executive Secretary on December 5, 2003. SPC 0007-0011.
5. The SPC MACT determination included review and comparison of existing sources of mercury emissions from CFB boilers with fabric filters, and evaluation of other control options. Conger Pre-Filed Testimony, June 27, 2007, at 17-18.
6. CFB boilers typically have high flue gas concentrations of high-carbon-content fly ash and therefore high levels of mercury capture can be accomplished in particulate emission control devices such as a baghouse (fabric filters). Conger Pre-Filed Testimony, June 27, 2007, at 16-19. Conger Hearing Testimony, October 3, 2007, p. 534. Hennenfent Pre-Filed Testimony, June 27, 2007, at 9-10. Hennenfent Hearing Testimony, October 3, 2007, pp 548-550, 556.
7. Sierra Club argued that activated carbon injection should have been more fully considered and applied for control of mercury and that actual mercury emissions at other coal-fired power plants are lower than SPC's emission limits. Sahu Pre-Filed Testimony, June 27, 2007, at 23-32. Sahu Pre-Filed Rebuttal Testimony, September 19, 2007, at 1-4. Sahu Testimony, October 3, 2007, at 577-585.
8. Activated carbon injection had not been demonstrated to achieve better results than that proposed by SPC and it had not been demonstrated as available technology for the type of

facility proposed by SPC. Conger Pre-Filed Testimony, June 27, 2007, at 18-19. Conger Hearing Testimony, October 3, 2007, p. 534. Hennenfent Pre-Filed Testimony, June 27, 2007, at 9-10. Hennenfent Hearing Testimony, October 3, 2007, pp 548-550, 556. Jenks Pre-Filed Testimony, September 10, 2007, at 10-11. Jenks Hearing Testimony, October 3, 2007, 564-566, 568, 571. Campbell Hearing Testimony, October 3, 2007, pp 599-605.

9. The use by SPC of a sorbent injection system with a dry-lime scrubber for control of NO_x and other acid gases that will inject low-moisture slurry of lime into the exhaust prior to the baghouse would result in the lime particles absorbing sulfur compounds and acid gases as well as mercury emissions that are collected in the bag house, similar to an activated carbon injection system. Jenks Pre-Filed Testimony, September 10, 2007, at 10-11.

10. The MACT emission limit for mercury for SPC is 4×10^{-7} lb/MMBtu or four tenths of a pound per trillion Btu heat input. SPC 0861-0864, 2481-2493. Jenks Pre-Filed Testimony, September 10, 2007, pp. 10-12. Campbell Pre-Filed Testimony, August 20, 2007, at 27, 37-38.

11. The SPC mercury limitation is the lowest mercury emission limit of any coal-fired electricity utility boiler. Jenks Pre-Filed Testimony, September 10, 2007, at 10. Jenks Hearing Testimony, October 3, 2007, p. 567. Campbell Pre-Filed Testimony, August 20, 2007, at 29. Campbell Hearing Testimony, October 3, 2007, at p. 607. Hennenfent Hearing Testimony, October 3, 2007, at p. 563.

12. EPA has rescinded the MACT standard for mercury and is regulating mercury emissions from power plants under the New Source Performance Standards ("NSPS"). Conger Pre-Filed Testimony, June 27, 2007, at 14-15. 70 FR 15994 (March 29, 2005).

13. EPA's current NSPS requirements for coal-fired electric generating units for mercury

include the use of fabric filters or electrostatic precipitators, wet or dry wet or dry flue gas desulfurization, SCR or SNCR on bituminous units. 70 FR 28606 (May 18, 2005). Conger Pre-Filed Testimony, June 27, 2007 at 20.

14. SPC's permit application proposes to use bituminous coal, fabric filters, SNCR for NOx reduction and a dry lime scrubber which meet the technical basis that EPA used to determine Best Demonstrated Technology under NSPS. Conger Pre-Filed Testimony, June 27, 2007, at 20.

15. EPA's NSPS standard for bituminous coal is 20×10^{-6} lb/MWh. Conger Pre-Filed Testimony, June 27, 2007, at 15.

16. SPC's emissions limit for mercury in its AO is below the NSPS mercury control limit. Conger Pre-Filed Testimony, June 27, 2007, at 20.

Conclusions of Law

1. The Executive Secretary properly determined that SPC's emissions limit for mercury complied with the MACT requirements in 40 CFR § 63.43(d) and was and is the lowest in the United States. Findings of Fact 6, 9, and 11.

2. The Executive Secretary did not err in rejecting activated carbon injection for the reasons set forth in the Findings of Fact 8 and 9 above.

3. The Executive Secretary correctly determined that the MACT emission limit for mercury for SPC is 4×10^{-7} lb/MMBtu.

4. Sierra Club failed to meet its burden of proof that activated carbon was commercially available and could be applied to the SPC facility.

Issue 7

Issue 7 is whether the Executive Secretary failed to require sufficient analysis of the impacts of the SPC facility on visibility, soils, and vegetation.

Mr. Horrocks recused himself from discussion and voting on this issue. On November 7, 2007, the Board upheld the actions of the Executive Secretary on Issue 7 by a vote of five in favor (Peterson, Samuelson, Smith, Bunker, and Epstein) and one opposed (Burwell) based on the following findings and conclusions.

Findings of Fact

1. UAC R307-405-6(2)(a)(i)(D) states that an NOI must contain:

An analysis of the air quality related impact of the source or modification including an analysis of the impairment to visibility, soils, and vegetation and the projected air quality impact from general commercial, residential, industrial, and other growth associated with the source or modification. The owner or operator need not provide an analysis of the impact on vegetation having no significant commercial or recreational value.

2. SPC submitted in its NOI an analysis of the impacts to visibility, soils and vegetation.

SPC 0269-0272, 0637-0682, and 0284-0287.

3. Sierra Club argued that the analysis was inadequate because of lack of visibility information for Sevier Valley, lack of analysis of pollutants other than SO₂ and inadequate growth projections and information. Sahu Pre-Filed Testimony, June 27, 2007, at 33-38. Sahu Hearing Testimony, October 3, 2007, at 496-502.

4. SPC conducted and submitted, and the Executive Secretary reviewed and approved, an analysis regarding visibility by submitting a plume blight or visual impact analysis to determine whether or not a plume emanating from the proposed SPC project would be visible inside the nearby national parks (Class I areas) that require special protection. The results of SPC's plume

blight analysis showed that at five areas in Utah (Arches, Bryce, Canyonlands, Capitol Reef, and Zion National Parks) and one Class I area in Colorado (Weminuche Wilderness Area), the plume would not be visible to an observer in these Class I areas. Capital Reef is the closest (approximately 50 Kilometers) to Sevier Valley. Conger Pre-Filed Testimony, June 27, 2007, at 22-25. Conger Hearing Testimony pp. 427-429. Orth Pre-Filed Testimony, September 12, 2007, at 13. Campbell Hearing Testimony, October 3, 2007, at 516, 520, 528-530.

5. The visibility impacts in the Sevier Valley (a Class II area) were not modeled since there is no regulatory (federal or state) requirement for analyses of visibility impact in Class II areas. The Executive Secretary determined that “(n)ear-field modeling for visibility is also problematic because the models are complex and the results are too unreliable for using in pre-construction permitting. There are also limitations to their applicable use in transport area as small as the Sevier Valley.” Orth Pre-Filed Testimony, September 12, 2007, at 11-12. Orth Hearing Testimony, October 3, 2007, 443, 452-453. Conger Pre-Filed Testimony, June 27, 2007, pp. 22-25. Conger Hearing Testimony, October 3, 2007, pp. 427-429, 443. Campbell Pre-Filed Testimony, August 20, 2007, at 24-26.

6. SPC’s plume blight or visual impact analysis for Class I areas served as a proxy for Class II areas because there were Class I areas that were close enough to be covered by a plume blight analysis rather than a regional haze analysis. Campbell Hearing Testimony, October 3, 2007, at 528-530.

7. SPC’s AO contains two provisions for opacity monitoring, one relating to the overall facility and another specific monitoring requirement for opacity at SPC’s stack which govern and are related to visibility close to SPC’s facility. SPC 2490.

8. In preparing the soils and vegetation section of a PSD permit, SPC consulted EPA's NSR Manual and the Natural Resource Conservation Service ("NRCS") in order to review the soil types in the area. NSR Manual at D.4-5. Richins Pre-Filed Testimony, June 27, 2007, at 4-7.

9. SPC concluded that none of the soil types in the area are likely to show adverse impacts as result of the low levels of near field emissions from the SPC power plant. The emissions from the SPC facility are mildly acidic and should be neutralized by the soils in the area near SPC's facility which are mildly to strongly alkaline. Richins Pre-Filed Testimony, June 27, 2007, at 6-7.

10. SPC also relied on the fact that "for most types of soils and vegetation, ambient concentrations of criteria pollutants below the secondary [NAAQS] will not result in harmful effects." NSR Manual at D.4-5. Because SPC's modeled emissions are below the secondary NAAQS and the agricultural areas of the Sevier Valley are almost completely excluded from the predicted impact areas of the plume, harm to vegetation is not expected. Richins Pre-Filed Testimony, June 27, 2007, at 13-15. Orth Pre-Filed Testimony, September 12, 2007, at p. 10, Richins Hearing Testimony, October 3, 2007, at 455-464. Jenks Hearing Testimony, October 3, 2007, at 481.

11. SPC 's review of the vegetation surrounding the SPC power plant, after consultation with NRCS, Bureau of Land Management and the United States Forest Service did not identify species that required regulatory protection. Richins Pre-Filed Testimony, June 27, 2007, at 8-9.

12. SPC determined that while some primary crops grown in the Sevier Valley, alfalfa, wheat and barley are considered to be SO₂ sensitive, the maximum modeled SO₂ concentrations

are below the threshold level at which harm to these crops is known to occur. Richins Pre-Filed Testimony, June 27, 2007, at 12-13. Jenks Pre-Filed Testimony, September 10, 2007, at 12-13.

13. SPC's emissions and modeling information was reviewed by UDAQ's toxicologist who determined that additional analysis was not required. Jenks Pre-Filed Testimony, September 10, 2007, at 12-13. Jenks Hearing Testimony, October 3, 2007, at 481.

14. The Executive Secretary reviewed SPC's modeling analysis and determined that no observable changes in native vegetation or crop plants were expected. Orth Pre-Filed Testimony, September 12, 2007, at 10-11.

15. The SPC growth analysis determined that the additional impacts caused by the project would be minimal. SPC 0288, 0742-0747, 1402-1409. Jenks Pre-Filed Testimony, September 10, 2007, at 12-13. Campbell Pre-Filed Testimony, August 20, 2007, at 20-22.

Conclusions of Law

1. UAC R307-405-6(2)(a)(i)(D) setting forth the requirements relating to visibility, soils, vegetation and impacts from growth for projects such as the SPC facility does not specify the extent or content of the analysis regarding the impairment to visibility, soils, vegetation and growth for the area.

2. The Executive Secretary's determination that the analysis submitted by SPC on visibility, soils, vegetation and impacts from growth was adequate and met the requirements of UAC R307-405-6(2)(a)(i)(D) was correct and reasonable.

3. The Executive Secretary did not err in determining that the requirements of UAC R307-405-6(2)(a)(i)(D) had been met on visibility based on the Findings of Fact 4-7 as stated above.

4. While the SPC analysis focused on some specific pollutants for impact on soils and vegetation, all emissions were considered (Findings of Fact 8-14), and the Sierra Club did not meet its burden of proof that analysis of other impacts was not done or necessary.

5. The Executive Secretary did not err in determining that the requirements of UAC R307-405-6(2)(a)(i)(D) had been met for growth analysis based on Finding of Fact 15 above.

Issue 8

Issue 8 is whether the Executive Secretary illegally exempted the proposed facility from a cumulative Class I increment analysis.

On November 7, 2007, the Board upheld the actions of the Executive Secretary on Issue 8 by a vote of six in favor (Horrocks, Peterson, Samuelson, Smith, Bunker, and Epstein) and one opposed (Burwell) based on the following findings and conclusions:

Findings of Fact

1. Utah Admin. Code R307-405-6(2) states:

Every new source or major modification must be reviewed by the Executive Secretary to determine the air quality impact of the source to include a determination whether the source will cause or contribute to a violation of the maximum allowable increases or the NAAQS in any area. The determination of air quality impact will be made as of the source's projected start-up date. Such determination shall take into account all allowable emissions of approved sources and growth in the affected area, or not, and, to the extent practicable, the cumulative effect on air quality of all sources and growth in the affected area.

2. PSD increments are the maximum allowable increases of particular pollutants. PDS Class I increments are incremental amounts of pollution above a baseline level that cannot be exceeded when new sources are constructed in a protected Class I areas. UAC R307-405-5 and UAC R307-405-17.

3. SPC performed an increment analysis to include a Class I increment analysis for

Capitol Reef, Canyonlands, Zion, Arches, and Bryce National Parks. Wilkerson Pre-Filed Testimony, June 27, 2007, p. 27. Prey Pre-Filed Testimony, September 10, 2007, at 4.

4. The SPC cumulative analysis showed that the increments both annual and short term to include Class I increments were not exceeded at any National Park. Wilkerson Pre-Filed Testimony, June 27, 2007, p. 27-28, 31, 34. Wilkerson Hearing Testimony, October 1, 2007, at 232, 346.

5. SILs is the acronym for Significant Impact Levels, which are concentration levels that consist of 4 percent of the Class I increment. Wilkerson Testimony, October 1, 2007 at 230-231. Wilkerson Pre-Filed Testimony, at 26. Heying Pre-Filed Testimony, at 13-14.

6. Applying SILs as a screening method, if a source models in below the SILs, then the analysis is deemed complete. However, if a source models in above the Class I SILs, then a cumulative Class I increment analysis is required. Wilkerson Pre-Filed Testimony, June 27, 2007, at 26, 28. Prey Pre-Filed Testimony, September 10, 2007 at 5.

7. During the initial SPC permitting process, upon UDAQ's suggestion, SPC's modeler contacted the National Park Service ("NPS") for guidance on performing a cumulative Class I analysis. Wilkerson Pre-Filed Testimony, June 27, 2007, at 26.

8. The NPS had adopted the use of Class I SILs and recommended SILs to both SPC and the UDAQ as the method to follow for the far-field modeling effort. Wilkerson Pre-Filed Testimony, June 27, 2007, p. 26. Wilkerson Hearing Testimony, October 1, 2007, at 230, 231. Heying Pre-Filed Testimony, September 10, 2007, at 13.

9. The use of SILs as a screening tool is accepted in Utah and among other states and is supported by the National Park Service and the EPA. Heying Pre-Filed Testimony, September

10, 2007, at 13.

10. SPC performed modeling for the SPC facility, and the modeled maximum concentrations came in below the PSD Class I increment and PSD Class I SILs. Wilkerson Pre-Filed Testimony, June 27, 2007, at 27-28, 35. Prey Pre-Filed Testimony, September 10, 2007, at p. 4-5, 7. Wilkerson Hearing Testimony, October 3, 2007, at 346.

11. In September 2003, SPC submitted its final permit application based upon the SILs modeling. Wilkerson Hearing Testimony, October 1, 2007, at 231.

12. In April 2004, the NPS reran the SPC's cumulative analysis using SPC's modeling files, but also added Hunter Unit 1 and IPP Unit 3 to its analysis, and confirmed no Class I increment violations. Wilkerson Hearing Testimony, October 1, 2007 at 230-233; 238. Heying Hearing Testimony, October 3, 2007, at 393-394.

13. Sierra Club argued that use of SILs was not appropriate without going through rulemaking to authorize use of SILs.

Conclusions of Law

1. Use of SILs is an appropriate screening device for making the determination under UAC R307-405-6(2) as to whether a source would cause or contribute to violations of maximum allowable increases or whether a full cumulative Class I increment analysis is required to make that demonstration.

2. The Executive Secretary did not err in making a determination that the final application from SPC could be based on the SILs analysis properly exercising discretion in determining the information requirements to demonstrate that the provisions of UAC R307-405-6(2) were met.

3. The Executive Secretary complied with UAC R307-405-6(2) based not only upon use of the SILs, but also the cumulative analysis performed by both SPC and the National Park Service which confirmed that emissions from the proposed SPC source would not cause or contribute to any violations of the maximum allowable increases.

4. Use of SILs is a technical tool for making the determination under UAC R307-405-6(2) and does not require rulemaking.

Issue 9

Issue 9 is whether the Executive Secretary violated Utah rules because, as permitted, the proposed facility will contribute to Class I SO₂ increment violations at Capitol Reef National Park.

On November 7, 2007, the Board upheld the actions of the Executive Secretary on Issue 9 by a vote of six in favor (Horrocks, Peterson, Samuelson, Smith, Bunker, and Epstein) and one opposed (Burwell) based on the following findings and conclusions.

Findings of Fact

1. The findings of fact from Issue 8 are incorporated herein.

2. Though the Executive Secretary ultimately relied upon the SILs for the cumulative Class I increment analysis that was performed by SPC, the UDAQ required that increment consuming sources within the domain (Utah and surrounding states) needed to be modeled. Wilkerson Pre-Filed Testimony, June 27, 2007, at 30-31.

3. Hunter Unit 1 and IPP Unit 3 were not included in the cumulative Class I increment analysis done by SPC under UAC R307-405-6(2). Wilkerson Pre-Filed Testimony, June 27, 2007, at 33, 35. Wilkerson Hearing Testimony, October 1, 2007, at 232-33.

4. Sierra Club argued that Hunter Unit 1 and IPP Unit 3 were required to be included based on documents and testimony on construction dates of Hunter Unit 1 and proposed construction dates of IPP Unit 3. Sierra Club Pre-Hearing Brief, Exhibits 16 and 17. Milford Pre-filed Testimony, June 27, 2007, at 5-7,

5. The Executive Secretary did not require that Hunter Unit 1 be included because the Executive Secretary deemed Hunter Unit 1 to have been permitted and commenced construction before the time of the baseline date of January 6, 1975 (based on documentation presented by Executive Secretary), and EPA agrees with that determination. Heying Hearing Testimony, October 1, 2007, at 257-265, 276-277.

6. IPP Unit 3 was not included because it was not an approved, permitted source at the time the SPC Class I increment modeling review took place. Wilkerson Pre-Filed Testimony, June 27, 2007, at 33, 35.

7. In a subsequent cumulative analysis performed by the National Park Service, both IPP Unit 3 and Hunter Unit 1 were included and no Class I increment violations were shown. Wilkerson Hearing Testimony, October 1, 2007, at 232-33, 238. Heying Hearing Testimony, October 3, 2007, at 393-394.

8. The Executive Secretary did not require the use of maximum actual 3- and 24-hour emission rates, and thus SPC used average annual emissions in its Class I increment analysis. Heying Pre-Filed Testimony, September 10, 2007, at 8. Heying Hearing Testimony, October 1 2007, at 254-57.

9. PSD regulations, specifically 40 C.F.R. § 51.166(b)(21) and § 51.21(b)(21), do not directly address how one is to determine actual emissions when modeling short-time periods,

such as 3 and 24-hour averaging times for a cumulative Class I increment analysis. Wilkerson Pre-Filed Testimony, June 27, 2007, at 32.

10. Sierra Club argued that using annual average emissions rates underestimates increment consumption because it does not account for sources which may emit at higher than annual averages rates over the shorter time period. Milford Pre-Filed Testimony, June 27, 2007, at 3-12.

11. Sierra Club's expert acknowledged the question is unsettled. Milford Hearing Testimony, October 1, 2007, at 302. She testified that use of annual averages was too low, and that all sources simultaneously emitting at their short term maximum may be too extreme which level would be permissible to back away from, but did not state what should be used. Milford Hearing Testimony, October 1, 2007, at 299, 303-305.

12. EPA is divided on what is an acceptable approach between the two. Heying Hearing Testimony, October 1, 2007, at 253-57, 266. Milford Hearing Testimony, October 1, 2007, at 299-302.

13. EPA signed a Memorandum of Understanding with the State of North Dakota stating that that use of annual averages is an acceptable method for cumulative Class I increment analysis. Heying Pre-Filed Testimony, September 10, 2007, at 8. Heying Hearing Testimony, October 1, 2007, at 254-257.

14. To model using existing sources at their maximum actual 3-hour average and 24-hour average SO₂ emission rates overestimates the impact of those facilities. Wilkerson Hearing Testimony, October 1, 2007, at 239-42.

15. Use of annual averages rather than maximum actual 3-hour average and 24-hour

average more accurately reflects actual air quality. Heying Pre-Filed Testimony, September 10, 2007, p 6-8. Heying Hearing Testimony, October 1, 2007, at 257, 266, 268-269, 272-273.

16. SPC submitted one year of meteorological data with its September 2003 permit application required by the rules. Wilkerson Hearing Testimony, October 1, 2007, at 242-243.

17. Sierra Club argued that one year of meteorological data was insufficient. Milford Pre-Filed Testimony, June 27, 2007, at 23. Milford Hearing Testimony, October 1, 2007, at 294.

Conclusions of Law

1. The Executive Secretary did not err in determining that IPP Unit 3 and Hunter 1 need not be included in any cumulative analysis to assess violation of Class I increments in that IPP Unit 3 was not permitted and Hunter 1 was included in baseline as supported by the Findings of Fact 5 above.

2. Whether IPP Unit 3 and Hunter 1 were included by SPC in its cumulative analysis is not significant because in the cumulative analysis performed by the National Park Service, both IPP Unit 3 and Hunter Unit 1 were included and the results were also under the Class I increment. See Finding of Fact No. 7 above.

3. The one year of meteorological data submitted by SPC complied with the regulation in effect at the time of the permit application.

4. UAC R307-405-4(1) allows for discretion whether to use maximum actual short term average emission rates or annual average rates.

5. The Executive Secretary's use of long term averages for modeling purposes was protective of the increment in that it more accurately represented actual air quality than using every source's maximum emission rates and was in compliance with existing rules of the Board

based on the Findings of Fact, specifically 14 and 15 above.

6. The Executive Secretary complied with the rules of the Board in determining sources to be included, required meteorological data, and use of annual average emissions of sources in modeling for increment determinations.

7. The proposed SPC installation will not contribute to Class I increment violations at Capitol Reef National Park based on the modeling analysis.

Issue 10

Issue 10 is whether the approval order for the SPC facility is now invalid because construction did not commence within 18 months of the approval order, having therefore automatically expired, and that the Executive Secretary's purported approval of the extension was illegal.

On October 1, 2007, the Board ruled on the first part of Issue 10 (whether the approval order is invalid because construction did not commence within 18 months, having therefore automatically expired), by a vote of six in favor (Horrocks, Peterson, Samuelson, Smith, Bunker, and Epstein) and none opposed, determining the approval order had not automatically expired based upon the following:

Findings of Fact

1. The Executive Secretary signed the Sevier Power Company Approval Order ("AO") on October 12, 2004 and 18 months from that date is April 12, 2006. SPC 2531.

2. On October 12, 2004 and on April 12, 2006, the applicable rule was UAC R307-401-11 (now renumbered as UAC R307-401-18) which provides:

Approval orders issued by the executive secretary in accordance with the provisions of R307-401 shall be reviewed eighteen months after the date of

issuance to determine the status of construction, installation, modification, relocation or establishment. If a continuous program of construction, installation, modification, relocation or establishment is not proceeding, the executive secretary may revoke the approval order.

3. Condition 9 of the Sevier Power Company AO states:

[i]f construction and/or installation has not been completed within eighteen months from the date of this AO, the Executive Secretary shall be notified in writing on the status of the construction and/or installation. At that time, the Executive Secretary shall require documentation of the continuous construction and/or installation of the operation and may revoke the AO in accordance with R307-401-11.

SPC 2535.

4. On November 17, 2005, SPC requested in a letter to the Executive Secretary that the running of the 18 month period for construction of the power plant be held “in abeyance” pending resolution of the litigation. Jenks Pre-Filed Testimony, September 10, 2007, at 13. Sprott Pre-Filed Testimony, September 10, 2007 at 11-12.

5. The Executive Secretary conducted a review of the status of the SPC approval order prior to April 12, 2006. Jenks Hearing Testimony, October 1, 2007 at 84-86. Jenks Pre-Filed Testimony, October 22, 2007, at 10. Sprott Pre-Filed Testimony, September 10, 2007 at 11-12.

6. On June 6, 2007, the Executive Secretary, at the request of the Board, sent a letter to SPC in response to the November 17, 2005, letter explaining the Executive Secretary’s position on the request and that the approval order had not been revoked. June 6, 2007 Letter from Richard Sprott to Fred Finlinson: Jenks Pre-Filed Testimony, September 10, 2007, at 13; Jenks Pre-Filed Testimony, October 22, 2007, at 11.

7. Sierra Club argued that a federal rule, 40 CFR 52.21(r), stated that “[a]pproval

to construct shall become invalid if construction is not commenced within 18 months of receipt of such approval. . .”, and therefore SPC’s approval order is invalid.

8. 40 C.F.R. § 52.21(r) was not incorporated into and effective as part of UAC R307-405-19(1) by the Air Quality Board, until June 2006.

Conclusions of Law

1. The operative provisions, UAC R307-401-11 and SPC AO Condition 9, grant the Executive Secretary discretion to decide whether, based upon his review, to revoke an approval order if construction has not commenced after 18 months. The Executive Secretary reasonably exercised discretion in not revoking the approval order.

2. 40 CFR 52.21(r) was not applicable to the SPC permit on April 12, 2006, therefore, the approval order did not automatically expire.

3. The Executive Secretary properly interpreted and complied with the requirements of UAC R307-401-11 and SPC complied with the conditions of the approval order.

On November 12, 2007, the Board upheld the actions of the Executive Secretary on the remaining part of Issue 10 (the legality of the 18 month review of the approval order) by a vote of six in favor (Horrocks, Peterson, Samuelson, Smith, Bunker, and Epstein) and one opposed (Burwell). The Boards findings and conclusions on the legality of the 18 month review were based on the following:

Findings of Fact

1. The findings of fact for the first part of Issue 10 are incorporated herein.

2. Sierra Club argued that the Executive Secretary should have conducted a BACT review and established a new construction date at the time of the 18-month review.

3. After receipt of the November 17, 2005 letter from SPC, the matter was reviewed by DAQ staff and there was consultation between staff and management (including the Executive Secretary) with respect thereto. Jenks Hearing Testimony, October 1, 2007, at 86-89. Jenks Pre-Filed Testimony, September 10, 2007, at 13. Jenks Pre-Filed Testimony, October 22, 2007, at 10. Sprott Pre-Filed Testimony, September 10, 2007, at 11-12.

4. The Executive Secretary directed that his permitting engineer conduct an informal review of air quality permits that had been issued subsequent to the Sevier Power Company Approval Order, to compare the emissions limitations between those permits and the SPC AO. Jenks Pre-Filed Testimony, October 22, 2007, at 11. Jenks Hearing Testimony, October 1, 2007, 88-92.

5. After the review, the Executive Secretary found nothing to indicate that the BACT determinations for the SPC facility were outdated or otherwise inadequate and opted not to revoke the SPC Approval Order. Jenks Pre-Filed Testimony, September 10, 2007, at 13. Jenks Hearing Testimony, pp. 89-92. Sprott Pre-Filed Testimony September 22, 2007, at 11-12.

Conclusions of Law

1. The Executive Secretary complied with the requirements of UAC R307-401-11 by conducting an 18 month review to determine the status of the SPC facility.

2. UAC R307-401-11 does not require a BACT review at the time of the 18-month review nor does it require a modification of the permit.

3. The Executive Secretary's actions in regard to the 18 month review were in

compliance with the requirements of UAC R307-401-11.

FINAL ORDER

Based on the above, the Board finds that the Executive Secretary did comply with State statutes and rules of this Board in issuing the approval Order to SPC to construct and operate a coal-fired electric generating facility near Sigurd in Sevier County, Utah. The Sierra Club Request for Agency Action as amended is denied. The approval order issued by the Executive Secretary to SPC is affirmed and upheld.

Dated this _____ day of January, 2008.

James Horrocks, Presiding Officer
Utah Air Quality Board

Notice of the Right to Apply for Reconsideration or Review

Within 20 days after the date this final order is signed in this matter by the Utah Air Quality Board, any party shall have the right to apply for reconsideration with the Board, pursuant to Utah Code Ann. § 63-46b-13. The request for reconsideration should state the specific grounds upon which relief is requested and should be submitted in writing to the Board at 168 North 1950 West, Salt Lake city, Utah, 84114. A copy of the request must be mailed to each party by the person making the request. The filing of a request for reconsideration is not a prerequisite for seeking judicial review of this Order.

Notice of the Right to Petition for Judicial Review

Judicial review of this Order may be sought in the Utah Court of Appeals under Utah Code Ann. § 63-46b-16 and the Utah Rules of Appellate Procedure by the filing of a proper petition within thirty days after the date of this Order.

CERTIFICATE OF SERVICE

I hereby certify that on this ____ day of January, 2008, I caused a copy of the forgoing Findings of Fact, Conclusions of Law, and Final Order to be mailed by United States Mail, postage prepaid, to the following:

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